

1  
2  
3  
4 CORREY MITCHELL,  
5 Plaintiff,  
6 v.  
7 ROXANNE RAMOS,  
8 Defendant.  
9

10 Case No. [23-cv-03588-JSW](#)  
11

12 **ORDER GRANTING MOTION FOR  
13 SUMMARY JUDGMENT**

14 Re: Dkt. No. 20  
15

16 **INTRODUCTION**  
17

18 Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint under 42  
19 U.S.C. § 1983 against a dentist at Salinas Valley State Prison (“SVSP”) where he was treated for  
20 tooth pain. Defendant filed a motion for summary judgment (ECF No. 20), Plaintiff filed an  
21 opposition (ECF No. 28), and Defendants filed a reply brief (ECF No. 29). For the reasons  
22 discussed below, the motion for summary judgment is GRANTED.  
23

24 **BACKGROUND**  
25

26 Defendant Dr. Ramos received a request for dental care from on July 19, 2022, from  
27 Plaintiff complaining of pain of 7 out of 10 in the right side of his face. She saw him the next day,  
28 conducted tests, and provided treatment for the caries on tooth #19. That evening Plaintiff was  
experiencing pain on a scale of 8 out 10, and the dentist on duty prescribed pain medication. The  
next day, Dr. Ramos examined Plaintiff again, conducted further tests, and removed tooth #15.  
Plaintiff continued to suffer severe pain over the next few days, during which time he received  
emergency medical care from other doctors and nurses (who are not defendants), including an  
EKG, antibiotics, and more pain medication. While in the clinic on July 23, 2022, he experienced  
dizziness that led to a fall while seeking treatment for his pain. Dr. Ramos examined him again on  
July 25, 2022, and after conducting further tests, removed tooth #19. Plaintiff’s pain related to his

1 teeth stopped.

2 Plaintiff claims Dr. Ramos was deliberately indifferent to his dental needs because she  
3 failed to provide him pain medication or antibiotics, extracted tooth #15 unnecessarily instead of  
4 tooth #19, and caused Plaintiff unnecessary pain while extracting tooth #19. The Court found  
5 these allegations, when liberally construed, stated cognizable claims for the violation of his Eighth  
6 Amendment rights and for medical malpractice (negligence) under California law.

7 Defendants submit the declaration of Dr. Ramos, who explained the reasons for her  
8 diagnoses and treatment and opined it was medically necessary under the circumstances, as well as  
9 that of another licensed dentist, Dr. Archibald, who reviewed the records of Plaintiff's care, and  
10 concluded as follows:

11 Plaintiff's claims of deliberate indifference, negligent dental care, wrongfully removal of tooth #15, and delayed/failed diagnosis of tooth #19 are unfounded. Plaintiff's toothache was successfully treated within 6 days, including a weekend, from the day his request was received. He was seen multiple times, appropriate tests and imaging were obtained at each visit, and diagnoses were accurate given the varied symptoms presented. Tooth #15 was not wrongfully removed since it was symptomatic, non-functional, periodontally involved, supererupted, and had root caries (cavity on the root). At no time during this treatment were antibiotics appropriate per ADA guidelines. The final diagnosis for tooth #19 was not evident at the beginning of treatment as the progression of pulpal death was occurring. Defendant was attempting to save tooth #19, which presented without radiographic evidence and test results leading to the need for extraction. Plaintiff was consistently provided with sufficient pain relief and medication. Should Plaintiff have required additional pain relief, he was able to obtain free over-the-counter NSAIDs from the Canteen. Consequently, in Dr. Archibald's opinion, from the moment Defendant saw Plaintiff on July 20, 2022, through the extraction of tooth #19 on July 25, 2022, Defendant provided care in line with the standard of care expected of a dentist in the same or similar circumstances.

22 (ECF No. 20-4 at ¶ 24.)

## 23 DISCUSSION

### 24 I. Standard of Review

25 Summary judgment is proper where the pleadings, discovery and affidavits show there is  
26 "no genuine issue as to any material fact and that the moving party is entitled to judgment as a  
27 matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of  
28

1 the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,248 (1986). A dispute as to a material  
2 fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the  
3 nonmoving party. *Id.*

4 The party moving for summary judgment bears the initial burden of identifying those  
5 portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine  
6 issue of material fact. *Celotex Corp.v. Cattrett*, 477 U.S. 317, 323 (1986). When the moving  
7 party has met this burden of production, the nonmoving party must go beyond the pleadings and,  
8 by its own affidavits or discovery, set forth specific facts showing there is a genuine issue for trial.  
9 *Id.* If the nonmoving party fails to produce enough evidence to show a genuine issue of material  
10 fact, the moving party wins. *Id.*

11 At summary judgment, the judge must view the evidence in the light most favorable to the  
12 nonmoving party. *Tolan v. Cotton*, 570 U.S. 650, 656-57 (2014). If more than one reasonable  
13 inference can be drawn from undisputed facts, the trial court must credit the inference in favor of  
14 the nonmoving party. *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999).

15 II. Analysis

16 1. Legal Standard

17 Deliberate indifference to a prisoner's serious medical needs violates the Eighth  
18 Amendment's proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S.  
19 97, 104 (1976). Serious medical needs may include dental care. *Hunt v. Dental Dep't* , 865 F.2d  
20 198, 200 (9th Cir. 1989). To prevail on such a claim, a prisoner-plaintiff must show a "serious  
21 medical need," and that the defendants' "response to the need was deliberately indifferent." *Jett v.*  
22 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

23 A prison official is deliberately indifferent if the "official knows that inmates face a  
24 substantial risk of serious harm and disregards that risk by failing to take reasonable measures to  
25 abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). An official is liable if the official  
26 "knows of and disregards an excessive risk to inmate health or safety; the official must both be  
27 aware of facts from which the inference could be drawn that a substantial risk of serious harm  
28 exists, and he must also draw the inference." *Id.* at 837. So, for deliberate indifference to be

1 established, there must be a purposeful act or failure to act on the part of the defendant and  
2 resulting harm. *Simmons v. G. Arnett*, 47 F.4th 927, 933 (9th Cir. 2022). “Under this standard, an  
3 inadvertent failure to provide adequate medical care, differences of opinion in medical treatment,  
4 and harmless delays in treatment are not enough to sustain an Eighth Amendment claim.” *Id.*  
5 Neither is a claim of medical malpractice or negligence. *See Toguchi v. Chung*, 391 F.3d 1051,  
6 1060 (9th Cir. 2004).

7 “A difference of opinion between a prisoner-patient and prison medical authorities  
8 regarding treatment does not give rise to a § 1983 claim.” *Franklin v. Oregon*, 662 F.2d 1337,  
9 1344 (9th Cir. 1981). Similarly, a “mere difference of medical opinion” among medical  
10 professionals as to the need to pursue one course of treatment over another does not raise a  
11 “material question of fact” regarding the issue of deliberate indifference. *Toguchi*, 391 F.3d at  
12 1058; *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). “[T]o prevail on a claim involving  
13 choices between alternative courses of treatment, a prisoner must show that the chosen course of  
14 treatment was medically unacceptable under the circumstances, and was chosen in conscious  
15 disregard of an excessive risk to [the prisoner's] health.” *Toguchi*, 391 F.3d at 1058 (citation and  
16 internal quotations omitted).

17 The elements of a claim for professional negligence are: (1) the duty of the professional to  
18 use such skill, prudence, and diligence as other members of his profession commonly possess and  
19 exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent  
20 conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's  
21 negligence.” *Paul v. Patton*, Cal.Rptr.3d 830, 835 (Cal. Sup. Ct. 2015).

22 2. Analysis

23 No rational fact-finder could conclude from the evidence that Dr. Romero's care for  
24 Plaintiff's medical needs amounted to deliberate indifference or negligence. It is undisputed  
25 Plaintiff was seen and treated promptly on multiple occasions, and his tooth pain was eradicated  
26 within six days. Plaintiff's medical records are clear that he received multiple tests and x-rays at  
27 each examination, various forms of treatment for his pain, and extensive dental procedures. There  
28 is no evidence from a qualified expert in dentistry or medicine that the diagnoses or treatment

1 Plaintiff received were inaccurate, medically inappropriate for his condition or symptoms, or  
2 otherwise incompatible with the standard of care required of a reasonable dentist. Under *Toguchi*  
3 and *Sanchez*, Plaintiff's lay opinion disagreeing with the treatment he received does not create a  
4 triable issue as to whether Defendant was deliberately indifferent to his medical needs. And the  
5 only reasonable inference that can be drawn from Dr. Archibald's expert opinion is that Dr.  
6 Ramos's removal of Plaintiff's two teeth, her treatment of Plaintiff's pain, her decision not to  
7 prescribe antibiotics, and the pain Plaintiff experienced was not negligent (or deliberately  
8 indifferent) under the circumstances, but was driven by the condition of Plaintiff's teeth and  
9 surrounding tissue. Consequently, there is not triable issue as to whether Dr. Ramos violated  
10 Plaintiff's Eighth Amendment rights or committed malpractice under state law.

11 Plaintiff's arguments to the contrary are unavailing. Plaintiff's contention that Dr. Ramos  
12 provided inadequate care because she relied upon obsolete x-rays from 2015 is not reasonably  
13 supported by the evidence. The evidence -- medical records and Dr. Ramos's declaration -- is  
14 uncontradicted that Dr. Ramos ordered a full set of x-rays on July 22, 2022. To whatever extent  
15 she may have relied upon earlier x-rays in her treatment decisions prior to that date, there is no  
16 evidence suggesting, let alone supporting a reasonable conclusion, that such treatment was  
17 medically improper or that a new set of x-rays taken earlier would have required different medical  
18 care than what he received. Indeed, as discussed above, the only reasonable conclusion that can  
19 be drawn from the evidence is that Dr. Ramos provided proper medical care to Plaintiff before and  
20 after the x-rays on July 22, 2022.

21 Plaintiff's contention he had an infection and needed antibiotics is not supported by the  
22 medical evidence. The only evidence to this effect is that that on July 23, 2022, Plaintiff received  
23 a diagnosis in the emergency room that he *possibly* had an infection or abscess and was prescribed  
24 antibiotics as a *prophylactic* measure against such a possibility. There is no evidence anyone with  
25 medical or dental expertise, including Dr. Ramos and Dr. Archibald, found a sign of an actual  
26 infection warranting antibiotics. The evidence that after extracting tooth #19, Dr. Ramos also  
27 found signs of a *possible* abscess and granuloma in the tooth does not, as Dr. Archibald points out,  
28 constitute a diagnosis of he had an abscess or infection or had a medical need for antibiotics or any

1 different care than Dr. Ramos provided.

2 Plaintiff asserts he could not take ibuprofen (which was prescribed to him) due to kidney  
3 disease, but Plaintiff indicates he told Dr. Ramos he did not have such a disease, and there is no  
4 evidence any medical professional opined ibuprofen was contraindicated for him. Plaintiff's  
5 assertion that he never told Dr. Ramos the pain was coming from his upper mouth is irrelevant  
6 because such a statement was not a basis for her decision to remove tooth #19 or any other  
7 treatment she provided. Plaintiff's contention Dr. Ramos failed to use sufficient anesthesia during  
8 the second extraction is simply a lay opinion that is contradicted by the expert evidence she used a  
9 medically appropriate amount of anesthesia. The pain Plaintiff experienced therefore cannot  
10 reasonably be attributed to deliberate indifference or negligence by Dr. Ramos. Plaintiff's  
11 assertion there were alternate treatment options is not supported by any evidence any such  
12 alternatives were medically appropriate under the circumstances, nor does the availability of  
13 alternative treatments does not, on its own, render the option Dr. Ramos chose deliberately  
14 indifferent or negligent.

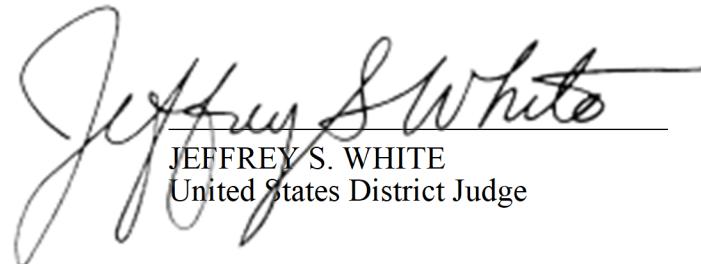
15 **CONCLUSION**

16 For the reasons discussed above, there is no triable issue of fact that, if resolved in  
17 Plaintiff's favor, would support a reasonable conclusion Dr. Ramos was deliberately indifferent or  
18 negligent in treating Plaintiff's dental condition. Therefore, her motion for summary judgment is  
19 GRANTED.

20 The clerk shall enter judgment and close the file.

21 **IT IS SO ORDERED.**

22 Dated: January 2, 2025

23   
24 JEFFREY S. WHITE  
25 United States District Judge  
26  
27  
28